IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 2230 of 2002
Date of Decision : March 04, 2010

Kaka Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. S.S.Sidhu, Advocate

Mr. P.S. Sidhu, Additional Advocate General, Punjab

T.P.S. MANN, J.

Vide judgment and order dated 27.3.2001 passed by Judicial Magistrate 1st Class, Bathinda, the petitioner was convicted for offences under Sections 279/337/304-A IPC and sentenced to undergo rigorous imprisonment for six months for the offence under Section 279 IPC, rigorous imprisonment for six months for the offence under Section 337 IPC and rigorous imprisonment for one year and to pay a fine of Rs.1,000/- for the offence under Section 304-A IPC and in default of payment of fine, to undergo further rigorous imprisonment for two months. All the sentences were ordered to run concurrently.

Aggrieved of his conviction and sentence, the petitioner filed an appeal but the same was dismissed by Additional Sessions Judge, Bathinda on 11.9.2002 by maintaining his conviction and sentences. The petitioner then filed the present revision in which he was granted the concession of bail on 20.12.2002.

According to the prosecution, on 27.1.1999 at about 6.50 p.m. complainant Balour Singh, alongwith Bawa Singh, wife Jasvir Kaur and Harpreet Singh alias Jagga was returning from Goniana Mandi to his village Nehour in his Jeep No. PBM-9886. When they were half a kilometer ahead of village Jeeda, a truck No. PBF-1981 came from the opposite direction which was being driven in a rash and negligent manner and without switching on the lights and hit against their jeep as a result whereof the jeep was badly damaged and both of his legs were fractured besides, receiving injuries on his person. Harpreet Singh and Jasvir Kaur also received injuries on their persons. They were removed from the jeep in an injured condition by the occupants of another truck which was passing from there. The petitioner, who was driver of the truck, which caused the accident, ran away from the spot after abandoning it at the spot. All the three injured were shifted to Civil Hospital, Goniana Mandi where they were admitted and given medical treatment.

On the basis of statement made by the complainant before ASI Ranjit Singh, FIR No. 7 dated 28.1.1999 was registered against the

petitioner for offences under Sections 279 and 337 IPC. Lateron, complainant Balour Singh died and, accordingly, offence under Section 304-A IPC was added to the heading of the FIR. Harpreet Singh alias Jagga also died.

During the course of investigation, ASI Ranjit Singh visited the spot and prepared rough site plan with correct marginal notes. The inquest reports on the dead bodies of Balour Singh and Harpreet Singh alias Jagga were prepared. The statements of the witnesses were recorded and upon completion of investigation, final report under Section 173 Cr.P.C., was submitted in the Court, where the petitioner was charge-sheeted under Sections 279/337 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr.Niranjan Lal Garg, PW2 Abhey Singh, PW3 Bawa Singh, PW4 Constable Sukhjit Singh, PW5 Head Constable Varinder Kumar, PW6 Harbans Singh, PW7 Jasvir Kaur, PW8 Darshan Singh, PW9 Satpal, PW10 ASI Kaur Singh, PW11 ASI Ranjit Singh, PW12 Dr. Jagjit Singh, PW13 Dr. Sanjay Malik, PW14 Dr. Neelesh Bansal, PW15 Dr.Gurcharan Singh and PW16 Dr. Pardeep Dhillon.

When examined under Section 313 Cr.P.C., the petitioner controverted all the allegations of the prosecution and claimed to be innocent. He took up the plea that he had been falsely implicated in this

case. No evidence in defence was led by him.

I have heard learned counsel for the parties and with their able assistance, perused the evidence.

In the FIR lodged at the instance of Balour Singh, since deceased, it was stated that the truck driven by the petitioner in a rash and negligent manner and, that too, without switching on its lights came from the opposite direction and struck against the jeep in which said Balour Singh, his wife Jasvir Kaur, his brother Bawa Singh and one Harpreet Singh, were travelling. As a result, Balour Singh, Jasvir Kaur and Harpreet Singh received injuries. They were taken out from the jeep by the occupants of another truck which was passing from there. The petitioner was not named in the FIR to be the one, who was driving the offending truck in question. His physiognomical features were also not described in the FIR. It was simply stated that the driver of the offending truck ran away from the spot after abandoning the same at the spot. It was the last week of January when the accident had taken place and the time was about 6.50 p.m. It would have been next to impossible for Bawa Singh and Jasvir Kaur, the two eye witnesses of the accident, to have sufficiently identified the petitioner more so when in the FIR itself it was mentioned that the front lights of the offending truck had not been switched on. In such a situation,the prosecution was under a duty to arrange the test identification parade so as to fix the identity of the petitioner as the driver of the offending truck. Both Bawa Singh and

Jasvir Kaur had admitted in their statements made before the Court that they did not know the petitioner nor had seen him previously. Jasvir Kaur had further admitted that she did not mention in her statement made before the police as to who was driving the offending truck as she had not identified him. She also stated that she had mentioned the name of the petitioner as the driver as told to her by her husband. Her husband was Balour Singh, who had received injuries in the same accident in which Jasvir Kaur had received injuries. Said Balour Singh while lodging the FIR had not named the petitioner to be the one driving the offending truck at the relevant time.

According to PW11 ASI Ranjit Singh, the petitioner was arrested on 9.2.1999. In his cross-examination, he stated that he did not know the petitioner and had also not taken steps for his identification. Therefore, it is apparent that during investigation of the case, the petitioner was not put up for test identification parade. It was only at the trial of the case when PW3 Bawa Singh and PW7 Jasvir Kaur, for the first time identified the petitioner as the one, who was driving the offending truck.

It was the consistent case of both PW3 Bawa Singh and PW7 Jasvir Kaur that they were going in a jeep driven by Balour Singh, since deceased on 27.1.1999 at about 6.50 p.m. when the truck driven by the petitioner in a rash and negligent manner came from the opposite direction and dashed against their jeep as a result of which both of them

as well as Bawa Singh received injuries. None of them mentioned if the petitioner had brought the offending truck to the wrong side of the road while causing the accident. The place of accident was got photographed by the police from the photographer, namely, Darshan Singh. Said Darshan Singh while appearing as PW8 deposed that he had taken the photographs of the jeep and the truck. The negatives of photographs were Exs.P3 to P7 while the positives were Exs.P8 to P12. Even a cursory look at the photographs would reveal that it was the driver of the jeep, who was responsible for causing the accident and not the driver of the truck, i.e. the petitioner. In all the photographs, the offending truck driven by the petitioner is shown present on its correct side whereas it was the jeep driven by Balour Singh, since deceased, which was travelled to the wrong side of the road when the accident had taken place. Mere fact that the petitioner while driving the offending truck had not switched on the front lights at the time of the accident is not sufficient to hold that it was on account of rash and negligent act of the petitioner that the accident had taken place. Under any situation, it was expected by the driver of the jeep to have driven it on the correct side of the road, instead of going to the wrong side.

In view of the above, it would be difficult to sustain the finding arrived at by the learned Courts below that it was the petitioner, who was rash and negligent in driving the offending truck and causing the accident in question.

Resultantly, the revision is accepted, conviction and sentence of the petitioner is set aside and he is acquitted of the charges against him.

As the petitioner is on bail, his bail bonds shall stand discharged. The fine, if already paid by the petitioner, be refunded to him.

(T.P.S. MANN)
JUDGE

March 04, 2010
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